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PARLIAMENTARY THRESHOLD IN PERSPECTIVE OF GENERAL STATEMENT AND MODERN LAW

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Abstract

This research tries to discuss the characteristics of modern law contained in Law No. 7 of 2017 on Elections. Through conceptual and legal approaches, this research tries to examine the concept of the relationship between the character of modern law and one of the legal products in Indonesia, namely Law No. 7 of 2017 on Elections. This research made Marc Galanter's thinking on the concept of modern law a benchmark and an analytical knife. The results of this study suggest that theoretically the product of regulation regarding election law in Law No. 7 of 2017 on Elections can be referred to as modern law. This research is expected to help academics and practitioners of election law to be able to dig deeper into the characteristics of modern law, not only based on the ideas of Marc Galanter but also by other thinkers or experts.

Keywords: Character; Law, Modern; Election

INTRODUCTION

In general, there are two legal systems, the Continental European and Anglo Saxon legal systems. Indonesia tends to adhere to the Continental European legal system or Civil Law (Nurhardianto, 2015). Continental European legal system or Civil Law places more emphasis on general statements or general statements. This general statement means that the law is written. On the other hand, in Indonesia the court's ruling is not the main legal source. However, at one time, the judge's or the court's ruling could also serve as a legal resource for the next judge who dismisses almost the same case, especially in electoral dispute resolution cases (Fahmi, Amsari, Azheri, & Kabullah, 2020). This is one of the uniqueness of the legal system in Indonesia.

The uniqueness of the legal system in Indonesia, also gives color in the form of written law or that was mentioned as a general statement. In general, these general statements or written legal forms tend to be rigid. Nevertheless, Marc Galanter instead praised him by

mentioning that law is always general statement (Sodiki, 2020). That modern law is a common law. The characteristics of modern law according to Marc Galanter, characterized include (Prasetyo, Teguh dan Barkatullah, 2007):

1. Uniform consists of uniform regulations and is no different from its application. The application of this law is more likely to be territorial than personal. This means that the same rules can be applied to people of all religions, citizens of all ethnic groups, caste regions and factions. This uniform expects the same treatment for everyone, as is commonly found in the legal norms in Indonesia in the phrase "whoever";
2. Transactional; this legal system is more likely to divide the rights and obligations arising from transactions (agreements, crimes, errors, etc.) from the parties concerned than to collect them in an unchanged set caused by decisive things outside of certain transactions. The set of status rights and obligations as they exist, is based more on earthly functions or conditions than on inherent differences of propriety or honor. Thus, modern law no longer looks at a person's status, but looks more at achievement. In contrast to primitive laws, where usually those with higher social standing, their rights are also higher. And vice versa;
3. Universal; special ways of setting are made to provide examples of a valid benchmark for its application in general rather than to demonstrate its unique and intuitive nature. Modern law is global and acceptable in international relations. The values contained therein are very universal and acceptable to all. However, sometimes the universality of modern law needs to also conform to the values that apply in their respective regions, such as the motto think globally, act locally;
4. Hierarchical; there is an orderly network of appeals and re-studies to ensure that local actions are in line with national benchmarks. This allows the system to be uniform and valid. Hierarchies with active supervision of such subordinate bodies should be distinguished from hierarchical systems by the disposal of functions to subordinate bodies that have full discretion in their jurisdiction. This hierarchical teaching is heavily

influenced by the teachings of Kelsenian, whose validity depends on the higher provisions. While in Indonesia, there are also norms of Customary Law that cannot be measured by the teachings of Kelsenian. Thus, the Customary Law in Indonesia becomes one of the unique legal legacies;

5. Bureaucratic, to ensure uniformity, the system must apply impersonally by following the written procedure for each case and deciding each case in line with the written rules as well. Modern law is drafted by institutions that do administer provisions of the law, such as legislative institutions, police, prosecutors and so on;
6. Rational; rules and procedures can be ascertained from written sources in ways that can be learned and conveyed in the absence of non-rational special talents. Modern law because it is rational, it can be adhered to by all walks of life. One of the keys to the rationale of modern law is carefully composed which does not give rise to the ambiguity of norms. Rational considerations can vary, can be seen from legal certainty, benefit or justice;
7. Professionalism; the system is managed by people selected through requirements, who can be tested for this work. They are full professionals, instead of people who deal with it in the past. Professionalism can also be interpreted by specialization of expertise, e.g. special expertise in criminal law, civil law and so on;
8. Procedural; as the system becomes more technical and more complex, then there are special professional intermediaries (which are different from just ordinary professionals) among the courts and the people who must deal with it. The procedure must also be gradual, indirect;
9. It can be revised; there is no dead decree in the system of procedure. The system contains regular code for revising rules and procedures, in order to meet fickle needs or to express fickle tendencies. Such changes can be substantial changes but also interpreted;

10. Reflecting power; such a system is strongly associated with a country that has a monopoly over disputes in its region. There is a political game in the formation of rules; and

11. Distinction; the task of obtaining the law and applying it to concrete cases is distinguished from other government functions in terms of personnel and engineering.

General statements apply in general and consider equations in public. It is not permissible to treat each other differently. This is the so-called value of freedom. However, laws drafted based on general statements may not be perfect because they are outdated or out of date. Thus, there needs to be a court ruling that can fix such flawed or less perfect laws. If this happens, then the equity element will be fulfilled. This is done so that the public can accept the law and be able to carry it out. In the context of Indonesia, this happens in the case of the president's tenure which can initially last very long as in the era of the new order then improved to only a maximum of 2 periods as it is today.

Based on that background, the authors tried to analyze one of the norms in electoral law, namely regarding parliamentary thresholds and their relation based on the perspective of general statements and modern law. The author tries to look at the background of the implementation of the parliamentary threshold and the dynamics of its application each election period. Through this research, the authors hope to find a link between parliamentary thresholds and general statements as well as the characteristics of modern law. This research is expected to contribute in the field of electoral law in order to realize democratic elections and produce elected representatives who are trusting and responsible.

METHODOLOGY

This research is a type of legal research with conceptual approach and statutory approach (Peter Mahmud Marzuki, 2014). Legal research is a study that examines norms, relating to overlap, emptiness and blurring of existing norms. The norms that are being reviewed in this study are related to the parliamentary threshold norm. The concept used as a measuring

instrument is the concept of general statement and modern law, while the legislation used in this study is the Law on Elections. Through prescriptive analysis (Peter Mahmud Marzuki, 2017), the authors try to find new arguments relating to the size of the parliamentary threshold in the perspective of general statement and the characteristics of modern law.

RESULT AND DISCUSSION

Parliamentary thresholds are the new legal norm in elections. Since its inset in the 2004 elections, the parliamentary threshold has been tested several times to the Constitutional Court (Adelina, 2018). There is a lot of public discontent about the application of the legal norms of the parliamentary threshold (Hartono, 2019). Nevertheless, the Constitutional Court has ruled that the application of parliamentary thresholds is constitutional (Pratama Putra, 2015).

The study will not discuss the constitutional or unconstitutional nature of the parliamentary threshold. However, this study tries to discuss the perspective of general statements and the characteristics of modern law in the legal norms of parliamentary thresholds. To make analysis easier, the authors created the following table:

No.	Modern Law Characters	Parliamentary Threshold
1.	Uniform (applicable to all)	in The Decision of the Constitutional Court No. 3/PUU-VII/2009 it is mentioned in the opinion of the Court that the application of the parliamentary threshold is reasonable and applies to all participants of the election (Al-Fatih, 2019).
2.	Transactional (transactions give rise to rights and obligations)	There are rights and obligations in determining norms regarding parliamentary thresholds. Political parties that pass the parliamentary threshold automatically become parliamentary political parties, while those who do not

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		qualify are entitled to follow verification as a requirement to enter the next election period (Jati, 2013).
3.	Universal (worldwide and the concept is accepted internationally)	In addition to Indonesia, the practice of applying thresholds is also found in several countries, such as: Argentina, Brazil, Bulgaria, Croatia, Czech Republic, Greece, Iraq, Italy, Montenegro, Poland, Portugal, South Korea, Turkey and Ukraine (Mellaz, 2012).
4.	Hierarchical (tiered)	Policies on parliamentary thresholds are not hierarchical. This refers to the Decision of the Constitutional Court No. 52/PUU-X/2012 on the annulment of Article 208 of Law No. 8 of 2012 on the effectiveness of parliamentary thresholds nationally (Fatih, 2018). Thus, the parliamentary threshold is applied only at the dpr level, but not to the DPRD (Fatih, 2018).
5.	Bureaucratic (compiled by the government)	Determination of parliamentary thresholds and their implementation follow procedures in accordance with the provisions in electoral law.
6.	Rational (logical)	From the first time it was implemented in 2004 to 2019, there has been no mathematical formula that determines rationally where the parliamentary threshold is obtained. Whereas theoretically, there are several formulas that can be used, such as taagepera formulas and so on (Siahaan, 2016).
7.	Professionalism (created by those who do work)	In general, the Electoral Act is drafted by professional experts in their respective fields.

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	for it)	
8.	Procedural (there are stages that must be met in its application)	There are procedures that must be passed to determine parliamentary thresholds and apply them in elections.
9.	Reviseable (amendable or amendable)	Changes in the size of the parliamentary threshold gradually, from 2.5% to 3% and the last 4% indicate that the parliamentary threshold is a legal norm that can be revised or amended.
10.	Reflecting power (political)	Determination of the size of the parliamentary threshold and its application becomes pros and cons in the community. However, the parliamentary threshold remained in place from 2004 to 2019 (Aminah, Siti, Halida Zia Afita, Cindy Oeliga Yensi, Sitorus, 2020).
11.	Discrimination (technically applied by different institutions)	In practice, the application of parliamentary thresholds has different personnel and technical factors. For example, for the testing of parliamentary threshold norms through the Constitutional Court, while their implementation in elections is carried out by the KPU and so on.

Based on the table above, there are 9 out of 11 characteristics of modern law that have been fulfilled. However, there are 2 characteristics that cannot be fulfilled, namely related to hierarchical and rational characters. This shows that there really is none of today's legal norms that integratively reflect the character of modern law. This condition is caused by parameters or characters set by modern law itself or due to the rigidity of current legal norms.

CONCLUSION

In the end, based on the above descriptions and discussions, it can be concluded that the threshold of parliament in the perspective of the general statement has fulfilled the characteristics of modern law. However, there are some shortcomings that arise within the threshold of such parliament when viewed from modern legal characteristics, such as hierarchicalness and rationality. Instead, the government determines the size of the parliamentary threshold by a definite method or formulation based on certain parameters or variables. Thus, there will be an element of rationality that is one of the characteristics of modern law. Similarly, hierarchical can be interpreted by applying the parliamentary threshold in the selection of legislative members at the regional level or DPRD.

In fact, the characteristics of modern law are not only based on the opinions of one or more figures. If so, then the intent and meaning will tend to be rigid. Modern law needs to be interpreted as a flexible idea according to the needs of the people in their respective regions. Because otherwise, it would be very easy to call the law a primitive law because it does not meet the characteristics of modern law. That view has to be straightened out. Thus, the authors hope that further research examines topics similar to opinions on modern law from other experts.

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